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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. [redacted] 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

ALLAN J. CARTER,
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ALFRED R. BATES,
C. T. B. GOODSPEED,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

JURISDICTIONAL STATEMENT PURSUANT TO RULE 12 OF THE SUPREME COURT OF THE UNITED STATES.

This is an appeal from a final judgment of the Supreme Court of Illinois, affirming a judgment of the Superior Court of Cook County, Illinois in favor of the validity of a statute of the State of Illinois which was attacked by appellants as in violation of their rights under the Con-

stitution of the United States, as will hereafter appear in detail in this Statement.

Appellants, former teachers in the educational system of the State of Illinois, are 945 in number (including those named in the caption hereof). All the parties who were appellants in the Supreme Court of Illinois are represented in this appeal. (R. 197, folio 268).

I.

Statutory Provisions Sustaining Jurisdiction.

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States is Section 237 (a) of the Judicial Code (28 U. S. C., Section 344) reading, to the extent relevant here, as follows:

> "SEC. 237. (a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. * * * ."

The remedy by writ of error under the foregoing section has been abolished and appeal substituted. (Act of January 31, 1928, as amended by the Act of April 26, 1928; C. 14, Sections 1 and 2, 45 Stat. 54; C. 440, 45 Stat. 456; 28 U. S. C., Sections 861 (a), 861 (b).)

II.

Statute of the State, the Validity of Which is Involved.

The Statute of the State of Illinois, the validity of which has been sustained by the Supreme Court of Illinois, the highest Court of that State, as not being violative of or repugnant to the provisions of the Constitution of the

United States is the statute effective July 12, 1935 (Laws of Illinois 1935, p. 1378). The provisions of this statute, hereinafter referred to as the Amended Miller Act, set forth verbatim, are:

"AN ACT to amend sections 1 and 2 and the title of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents, and for the voluntary retirement of superintendents of schools and members of the Board of Examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal section 3 of said Act.

Be it enacted by the People of the State of Illinois represented in the General Assembly:

SECTION 1. Sections 1 and 2 of 'An Act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents, and for the voluntary retirement of superintendents of schools and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as amended, are amended to read as follows:

SECTION 1. In every city in this State having a population exceeding 250,000 inhabitants, the board of education of such city, as soon as practical after this law becomes effective, shall retire all teachers, principals, district superintendents and assistant superintendents in the public schools in such city, who are sixty-five or more years of age, and thereafter shall retire all teachers, principals, district superintendents and asssistant superintendents in the public schools of such city, on attaining the age of sixty-five years.

SECTION 2. Each person so retired from service shall be paid the sum of five hundred dollars ($500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for

educational purposes: *Provided,* that any teacher, principal, district superintendent, or assistant superintendent so retired and receiving such annuity shall be subject to the call of the superintendent of schools in such city for consultation and advisory service: *And, provided, further,* that nothing in this Act contained shall in any way impair or prejudice any rights of a teacher, principal, district superintendent, or assistant superintendent so retired to annuity under other statutory provisions concerning any teachers' pension fund, or teachers' pension and retirement fund, established in accordance with the provisions of any statute of this State.

SECTION 2. The title of said Act is amended to read as follows: 'An Act to provide for the compulsory retirement of teachers, principals, district superintendents, and assistant superintendents, and for the payment of retirement annuities.'

SECTION 3. Section 3 of said Act is repealed." (The full text of this Act also appears in the R. 94, folio 97.)

III.

Date of Final Judgment and Date of Application for Appeal.

On December 4, 1936, the Supreme Court of Illinois denied a Petition for Rehearing which had been duly filed and considered. Thereupon, the opinion of said Court in this cause filed October 27, 1936, and the judgment of said Court entered October 27, 1936, became final as of that date. Under the decisions of the Supreme Court of Illinois (*People* v. *Clark,* 300 Ill. 583, and cases cited there) an original judgment of that Court upon the subsequent denial of a Petition for Rehearing is final as of the date of the original decision. The decision of the Supreme Court of Illinois is a final judgment within the meaning of Section 237a of the Judicial Code.

The date on which the petition for allowance of an appeal to this Court was presented to the Chief Justice of the Supreme Court of Illinois and the appeal allowed by him is January 18, 1937.

IV.

Opinion of the Court Below.

The opinion of the Supreme Court of Illinois in this cause, filed October 27, 1936, is set out in full in the Appendix to this Statement. The opinion is reported in 364 Ill. 547, 5 N. E. (2d) 84 (R. 288-297).

V.

Nature of the Case and Rulings Below.

The nature of the case and the rulings below which are deemed to bring the case within the jurisdictional provision relied on are as follows:

By an Illinois Statute, effective May 19, 1926, and popularly known as the Miller Act [Cahill's Ill. Rev. Stat. 1927, Chap. 122, Pars. 269 (1), 269 (2); Smith-Hurd Ill. Rev. Stat. 1927, Chap. 122, Pars. 614 (a), 614 (b); also set forth in full R. 71, folio 68] provision was made for the compulsory retirement of teachers and principals in the Illinois Public Schools in cities having 250,000 or more inhabitants. Section 1 of the Miller Act provided:

> SEC. 1. "* * * the Board of Education of such city shall retire from active service * * * all teachers, principals, * * * in the public schools of such city in accordance with the following schedule:" (R. 71, folio 68).

The schedule provided for the retirement of such persons in the year 1926 at age 75 or older; in 1927, at age 74 or older; in 1928, at age 73 or older; in 1929, at age 72 or older; and in 1930 and thereafter at age 70 or older (R. 68).

Section 2 of the Miller Act provided:

> SEC. 2. "Each person so retired from active service who served in the public schools of such city for twenty or more years prior to such retirement, shall be paid the sum of fifteen hundred dollars ($1,500.00) annually and for life from the date of such retirement from the money derived from the general tax levy for educational purposes" (R. 71, folio 68).

There then followed in Section 2 certain provisos, the first that any person so retired and receiving the annuity should be subject to call "for consultation and advisory service." The second proviso set forth that nothing in the Act should impair or prejudice any rights of a person thereunder retired to an annuity under other statutory provisions concerning any teacher's pension fund and should not repeal or modify such other statutory provisions (R. 71, folio 68).

By an amendment, effective July 1, 1927 (Laws of Illinois, 1927, p. 722) Section 3 providing for voluntary retirement was added. That section was amended in 1929 omitting the provision in the 1927 Act for voluntary retirement at age 70 and over upon an annuity for life of $1500 and making other slight changes which are not material here. As so amended it provided:

> "* * * all teachers, principals, * * * in the public schools of such city, and whose services * * * in the public schools of such city within the last twenty (20) years prior to retirement under this Act, shall aggregate * * * fifteen (15) years or more, and who have served in the public schools of the United States for twenty-five years or more, and who are sixty-five (65) or more years of age, * * * shall upon their own request, be retired from active service and thereafter be paid annuities for life from the moneys derived from the general tax levy for educational purposes: * * *
>
> Such annuities shall be paid respectively according to the following table of ages and annuities annually:

Age 65 ..... ten hundred dollars ($1,000)
Age 66 ..... eleven hundred dollars ($1,100)
Age 67 ..... twelve hundred dollars ($1,200)
Age 68 ..... thirteen hundred dollars ($1,300)
Age 69 ..... fourteen hundred dollars ($1,400)."
(Cahill Ill. Rev. Stats., 1929, Ch. 122, Par. 269 (3); Smith-Hurd Ill. Rev. Stats., 1929, Ch. 122, Par. 614 (c); R. 93, folio 95.)

The balance of Section 3 contains two provisos, the first of which is not material here. The second contains the same provisions as in Section 2 with respect to advisory service to be rendered by the teacher or principal as well as the provision that payment to be made under this section should be in addition to any other annuity under other Illinois laws for which the recipient should be qualified (R. 94, folio 97).

On July 12, 1935, the Miller Act was amended by the enactment of the statute, the validity of which is here in question. This amended Miller Act is set forth in full under Part II of this Statement. As construed, it reduces the annual payments to retired teachers and principals to the yearly sum of $500.00 and repealed Section 3 of the Miller Act relating to voluntary retirement.

The appellants had been in the employ of the appellee, the Board of Education, as active teachers and principals in the public schools of the City of Chicago (R. 24, 113, 115, 116, 122, 127, 128, 186, 187, 192, 193, folios 4, 5, 144, 146, 148, 153, 158, 159, 248, 249, 254, 255, 256). Prior to July 12, 1935, 162 of appellants had been compulsorily retired on annuities for life of $1,500.00 each (R. 24, 113, 187, folios 4, 5, 145, 249). 651 of the appellants had voluntarily retired on their written requests on annuities for life ranging from $1,000.00 to $1,500.00 each (R. 24, 115, 187, folios 5, 146, 249). The remaining 132 appellants, being fully qualified to voluntarily retire and upon such retirement to receive under the law then in force and effect, annuities "for life" in the

amounts fixed by law in force prior to July 12, 1935, made written requests for such retirement (R. 24, 122, 188, folios 5, 153, 250). These written requests were made in the months of May and June, 1935, and were submitted by the Superintendent of Schools to the Board of Education with the recommendation that each of said 132 appellants be voluntarily retired and receive annuities for life in amounts varying from $1,000.00 to $1,400.00. The reports of the Superintendent of Schools were submitted to the Board of Education at meetings held in June, 1935, but the Board, departing from its uniform custom, postponed action upon the reports indefinitely (R. 97, 98, 99, 100, 101, folios 103, 105, 106, 107, 111, 112). After July 12, 1935, when the repeal of Section 3 of the Miller Act providing for voluntary retirement became effective, the Board of Education took action to compulsorily retire these 132 teachers and principals under the supposed authority of the new Act, upon annuities for life of $500.00 a year each (R. 47, folio 40). The effect of the Amended Miller Act of July 12, 1935, as retroactively construed by the Illinois Supreme Court in this case, has been to reduce the life annuities of the 813 other appellants previously retired to $500 a year.

Twenty of the appellants herein filed a complaint in the Superior Court of Cook County, Illinois, seeking to enjoin the defendant Board of Education and others from reducing the retirement annuities of appellants and to compel defendants to restore to appellants the annuities, which the Illinois Statute in force at the time of their several retirements, provided should be paid to them for the remainder of their respective lives (R. 23, folio 3). The complaint was filed on their behalf and that of others similarly situated, who might choose to join in the cause (R. 23, folio 3). By order of the trial court, the remaining appellants herein, being persons similarly situated, were permitted to intervene as parties plaintiff (R. 113, 186, folios 144, 248).

Origin and Treatment of the Federal Constitutional Questions by the Courts Below.

Appellants, in their complaint, alleged their willingness to render consultation and advisory service and to comply in all respects with the requirements of the Miller Act in effect prior to the 1935 amendments (R. 58, folio 54). They claimed that their compliance with the provisions of this Act and with its prerequisites as to age and length of service had given rise to contractual and quasi-contractual rights to receive for life the retirement allowances provided for by said Act at the time of their respective retirements (R. 58, folio 54). They further alleged that if the amended Miller Act of 1935 were held applicable to them and effective in reducing their annuities to a uniform rate of $500 a year, this Act would be in violation of Section 10, Article I of the Constitution of the United States and of the Fourteenth Amendment to said Constitution and would be invalid (1) as an attempt to take away vested rights and to take property without due process of law, and (2) as an attempt to impair obligations of contracts (R. 62, folios 57, 58).

The Federal constitutional questions raised in the complaint were pressed in argument both in the trial court and before the Supreme Court of Illinois. In dismissing the complaint for want of equity, the trial Judge stated as to the 1935 Amendments:

> "The plaintiffs' contention here is that if this amendment applies to the plaintiffs the amendment is unconstitutional * * * (R. 281, folio 548).
>
> "The Court is going to pass on this case from the main issue involved,—I may say the meat of this controversy.
>
> "I am satisfied that a pension right is not a vested right. It is a creature of the Legislature. I am of the opinion that it can be modified, changed, or altered by the Legislature, and the judgment of the Court will be,

in this injunction suit, that the injunction is denied and the bill dismissed for want of equity'' (R. 282, 283, folios 548, 549).

The Supreme Court of Illinois, in sustaining the validity of the amended Miller Act of 1935, passed squarely upon the Federal constitutional questions. The whole opinion of that court is printed in the Appendix to this Statement. The following excerpts show the court's decision upon this issue:

> ''They (appellants) bring the cause here on the ground that a constitutional question is involved in the construction given the Act by the chancellor (R. 288).
>
> ''Appellants' complaint is bottomed on the proposition that the rights of teachers retiring or entitled to retire prior to the 1935 amendment were fixed and determined by the law in effect at the time of their retirement or written request for retirement and could not be abolished or reduced by subsequent act of the legislature, and that if the 1935 amendment is to be construed as the Superior Court construed it, it is in violation of * * * the Federal constitution * * *, as an attempt to take away vested rights, to take property without due process of law, and to impair obligations of contract * * *'' (R. 290).
>
> ''The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal constitution'' (R. 292-293).

Appellants' assignments of error to this Court, contained in the petition for appeal, claim the protection of Section 10, Article I of the Constitution of the United States and of the Fourteenth Amendment thereto.

The appellants have, from the inception of this case, raised and relied upon the Federal constitutional issues and these issues have been squarely met and decided by both of the Illinois courts. The judgments appealed from, holding the amended Miller Act of 1935 to be applicable to appellants and valid, could not have been reached without deciding the Federal questions. The case is therefore a proper one for consideration by this Court under Section 237 (a) of the Judicial Code.

The Federal Questions Raised in This Case Are Substantial.

When appellants retired pursuant to the provisions of the original Miller Act, which provided for annuities of from $1,000 to $1,500 per year, their relation with the State was contractual and the statute became a part of their contracts, vesting rights in them which could not later be impaired.

The 651 appellants who voluntarily retired after the enactment of Section 3 of the Miller Act and prior to the amendment of July 12, 1935 were offered and made a definite choice. They were entitled to continue to serve as active teachers or principals, at salaries in excess of the retired pay offered or they were permitted to retire upon life annuities provided by the Act. They chose the latter alternative and this voluntary change in position in response to the offer made by the State constitutes consideration for the contracts on the part of the State, through its agent, the Board of Education, to furnish the promised annuities for life, without impairment.

The same option was granted and the same election was made by the 132 appellants who qualified for voluntary retirement and filed written requests therefor prior to July 12, 1935, on which the defendant Board failed to act. They,

too, accepted the offer contained in Section 3 of the Act as in force at the time of making such written requests and being qualified for such retirement and recommended therefor, had the same rights under that law as did those who were actually voluntarily retired. The withheld Board action was purely ministerial and therefore these appellants are entitled to the same relief as those who had voluntarily retired prior to May, 1935 (R. 278, folio 544).

The 162 appellants who had been compulsorily retired before the amendments of 1935, in reliance on the provisions of the Act for "annuities" "for life" which were held out to them without qualification or reservation, by continuing in the service for the required period and by their retirement under the Act at the stipulated age had become entitled to the continuance of the payment of those annuities as deferred compensation for the full term provided.

The principal questions here presented are:

Did the Illinois Compulsory and Voluntary Retirement Act (the Miller Act) Sections 1 and 2 of which became effective May 19, 1926, and Section 3, July 1, 1927, enter into and become a part of the several contracts of appellants? If so, it seems to follow that there has been an impairment of the obligation under these contracts by the statute here complained of, which became effective July 12, 1935.

Did the appellants who before the 1935 amendments complied with all the provisions of that Act for compulsory or voluntary retirement and retired, or were fully qualified and sought retirement thereunder, become entitled to vested rights thereunder to the annuities therein provided for, for life as therein specified, of which rights they could not be deprived without the taking of property without due process of law?

This Court has inferentially held that the right of a police pensioner or his beneficiary became fixed and vested upon the happening of the particular event of death or retire-

ment. *Pennie* v. *Reis,* 132 U. S. 464. That case has been so interpreted by Dillon on "Municipal Corporations", (5th Ed.) Sections 430, 431; and by *Kavanagh* v. *Board of Police Commissioners,* 134 Calif. 50, 66 Pac. 36; *Roddy* v. *Valentine,* 268 New York 228, 197 N. E. 260; *City of Dallas* v. *Trammell* (Court of Civil Appeals, Texas) 96 S. W. (2d) 110.

This Court pointed out the distinction between gratuitous pensions and vested contract and property rights arising under War Risk insurance policies in the recent case of *Lynch* v. *United States,* 292 U. S. 571, 576-577.

In *Retirement Board* v. *McGovern,* 316 Pa. 161, 174 Atl. 400, the Pennsylvania Court held that retirement annuities were deferred and withheld compensation, saying (p. 169):

> "* * * when the conditions are satisfied, at that time retirement pay becomes a vested right of which the person entitled thereto cannot be deprived; it has ripened into a full contractual obligation. See Lynch *v.* U. S. (U. S. Supreme Court) decided June 4, 1934."

The Supreme Court of Pennsylvania again referred to *Lynch* v. *United States, supra,* stating in a foot-note that that case "described the difference between War Risk Insurance and a pension; the former having the incidents of a contract (as retirement pay does here)" (p. 170).

The *McGovern* case, *supra,* was the only decision involving retirement annuities referred to in the recent case of *Dismuke* v. *United States,* 297 U. S. 167.

The *Dismuke* case involved the Federal Civil Service Retirement Act which provided that the employee under the conditions specified "shall be entitled to an annuity payable from the civil-service retirement and disability fund." This Court held as to this provision:

> "The provision is mandatory, expressed in the terms of the right of the employee, which is inseparable from

> the correlative obligation of the employer, the United States'' (p. 169).

The question was there raised whether the United States District Court had jurisdiction under the Tucker Act which in granting it jurisdiction in certain cases specifically excepted suits for pensions. This Court referred to the fact that the exception was in the Tucker Act which became a law in 1887

> ''at a time when the term 'pensions' commonly referred to the gratuities paid by the Government in recognition of past services in the Army or Navy. The annuities payable under the Retirement Act are not gratuities in that sense'' (p. 170).

This Court then commented upon the fact that the Retirement Act did not refer to the annuities as pensions and held:

> ''We conclude that the annuities payable under the Retirement Act are not pensions within the meaning of the Tucker Act * * *'' (p. 171).

By this decision this Court clearly pointed out the distinction between the old-fashioned pensions granted by Acts of Congress passed after the rendition of service in the Army or Navy and retirement allowances and annuities provided for by an Act in force at the time the services were being rendered and at the time of retirement from service. Such pensions granted after the rendition of services, this Court had held in its early decisions, to be mere gratuities. Retirement annuities, however, under an Act in force at the time the services were being rendered, were held in the *Dismuke* case to give rise ''to a right of the employee'' and a ''correlative obligation of the employer.''

In the case of *Roddy* v. *Valentine*, 268 N. Y. 228, 197 N. E. 260, *supra*, the New York Court of Appeals construed an

Act for retirement of policemen in which they were referred to as "pensioners" and their retirement annuities as "pensions" and held (p. 231):

> "The concept embodied in the word 'pension' has developed far beyond the original idea of a bounty or gratuity, 'springing from the appreciation and graciousness of the sovereign', granted in recognition of past services."

As to the police retirement annuities there involved, the New York Court further held (p. 232):

> "Where, however, the statutory conditions for retirement existing when application is made have been met and the award of the pension or benefit has been made, or as of right should have been made * * * the interest becomes vested and takes on the attributes of a contract, which in the absence of statutory reservations, may not legally be diminished or otherwise adversely affected by subsequent legislation. (Pennie *v.* Reis, *supra;* * * *"

In a recent Georgia case, a fireman was retired and placed on the pension roll in 1933 at a pension of $100.00 per month. In 1935 the Georgia legislature passed a statute retroactive in terms reducing his pension to $75.00 per month. A petition for mandamus was filed alleging the 1935 Act to be unconstitutional and void as in violation of Section 10 of Article I of the Constitution of the United States. The Supreme Court of Georgia held that the 1935 law was void under the United States Constitution as an attempt to impair the obligation of a contract. *Trotzier* v. *McElroy,* 182 Ga. 719, 186 S. E. 817.

Other State cases holding that retirement annuity statutes similar to the original Miller Act became, from the

time of their passage, a part of the contract of employment or vested under the Statute are:

O'Dea v. *Cook*, 176 Cal. 659, 169 Pac. 366;

State v. *Love*, 89 Neb. 149, 131 N. W. 196, 34 L. R. A. (N. S.) 607, Ann. Cas. 1912 C. 542;

Fellows, Atty. Gen. v. *Connolly*, 193 Mich. 499, 160 N. W. 581;

State ex rel. Stafford v. *State Annuity Board*, 219 Wis. 31, 261 N. W. 718;

Renz v. *Hibbing Firemen's Relief Assn.*, 186 Minn. 370, 243 N. W. 713;

Cobbs v. *Home Insurance Co.*, 18 Ala. App. 206, 91 So. 627 (Petition for Certiorari denied by Supreme Court of Alabama, 91 So. 922);

Byrd v. *Dallas*, 118 Tex. 28, 6 S. W. (2nd) 738;

Lage v. *City of Marshalltown*, 212 Ia. 53, 235 N. W. 761.

Where the contract clause of the Constitution has been properly invoked, this Court will determine for itself the nature and effect of the alleged agreement and whether it has been impaired by subsequent legislation. *Larson* v. *South Dakota*, 278 U. S. 429, 433; *United States Mortgage Co.* v. *Matthews*, 293 U. S. 232.

A contract right is a property right and, as such, is entitled to protection under the Fourteenth Amendment to the Constitution of the United States. *Long Island Water Supply Company* v. *Brooklyn*, 166 U. S. 685.

Appellants have shown that the Federal constitutional questions were raised in their original pleadings, were considered and rejected by both of the Illinois courts which could not have upheld the Act of July 12, 1935 as retroactive and as applicable to appellants without passing upon these questions, and that the point involved is a substantial one. Appellants have met the requirements for a review by this Court under Section 237 (a) of the Judicial Code.

VI.

Cases Believed to Sustain the Jurisdiction.

The following cases are believed to sustain the jurisdiction of this Court:

Ingraham v. *Hanson*, 297 U. S. 378;
Larson v. *South Dakota*, 278 U. S. 429;
Home Building and Loan Assn. v. *Blaisdell*, 290 U. S. 398;
Worthen Company v. *Kavanaugh*, 295 U. S. 56;
Seton Hall College v. *South Orange*, 242 U. S. 100;
Pacific Telephone Co. v. *Tax Commission*, 297 U. S. 403.

We respectfully submit that the Supreme Court of the United States has jurisdiction of this Appeal by virtue of Section 237 (a) of the Judicial Code.

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APPENDIX.

Opinion of Supreme Court of Illinois—Reported in 364 Ill. 547, 5 N. E. (2nd) 84.

CHESTER C. DODGE *et al., Appellants,*

vs,

THE BOARD OF EDUCATION OF THE CITY OF CHICAGO *et al., Appellees.*

(Opinion Filed October 27, 1936. Rehearing denied December 4, 1936.)

Mr. Justice STONE delivered the opinion of the Court:

Appellants' bill filed in the superior court of Cook county seeking to enjoin appellees, the Board of Education of the City of Chicago and others, from reducing teachers' pensions as applied to them, was dismissed for want of equity. They bring the cause here on the ground that a constitutional question is involved in the construction given the act by the chancellor.

The original complaint was filed by twenty plaintiffs as a class suit on behalf of themselves and all others similarly situated. The Board of Education of the City of Chicago and certain of its officers, and the city of Chicago and certain of its officers, were made defendants. The act which is made the basis of this complaint is commonly known and is hereinafter referred to as the Miller Act. It is an act having to do with teachers' pensions. (Smith-Hurd Stat. 1927, chap. 122, par. 614a, p. 2586.) The complaint of appellants is, that by the revision of that act in 1935 vested rights of those teachers who had retired, or sought to do so, prior to the enactment of such revision were taken away. These appellants all have either retired or sought to retire before the 1935 amendment of the Miller act. The only provision of that amendment here attacked has to do with the reduction of pensions provided by the act.

This act was originally passed in 1926 and entitled, "An act to provide for the compulsory retirement of teachers,

etc., and the payment of retirement annuities." The act provides a pension in addition to that provided by the Teachers' Pension act of 1909. As originally enacted the Teachers' Pension act provided for voluntary retirement of teachers. The Miller act provided for compulsory retirement of teachers at the age of seventy and for the payment of retirement annuities of $1500 per annum. This was a separate act and in nowise affected the Teachers' Pension law, which provided a pension of $1000 per year on voluntary retirement. The additional annuities under the Miller act are paid solely out of funds raised by taxation. Teachers contribute nothing toward that fund. In 1927 the Miller act was amended to fix, by section 3, the annuities on a sliding scale from $1000 to $1500 to teachers voluntarily retiring between the ages of sixty-five and seventy. This, to teachers retiring under seventy, was a reduction from the flat amount of $1500 given by the original act. By the amendment effective on July 12, 1935, the title of the act was amended to read as follows: "An act to amend sections 1 and 2 and the title of 'An act to provide for the compulsory and voluntary retirement of teachers, principals, district superintendents, and assistant superintendents, and for the voluntary retirement of superintendents of schools and members of the board of examiners, and for the payment of retirement annuities,' approved May 19, 1926, as subsequently amended, and to repeal section 3 of said act." (Laws of 1935, p. 1378.) This amended act abolished the provisions for voluntary retirement and fixed the compulsory retirement age at sixty-five years. The annuities were reduced to a flat rate of $500 annually. A very large number of former teachers have joined in this proceeding, as did some who sought to retire in May and June, 1935, under the Miller act before the enactment of the 1935 amendment.

Appellants' complaint is bottomed on the proposition that the rights of teachers retiring or entitled to retire prior to the 1935 amendment were fixed and determined by the law in effect at the time of their retirement or written request for retirement and could not be abolished or reduced by subsequent act of the legislature, and that if the 1935 amendment is to be construed as the superior court

construed it, it is in violation of section 2 of article 14 of the constitution of Illinois and the fifth amendment of the Federal constitution and in violation of section 10 of article 1 of that constitution, as an attempt to take away vested rights, to take property without due process of law, and to impair obligations of contracts. The prayer of the bill is, that the board and its appropriate officers be required to take the necessary action to permit requests for voluntary retirement under the law in force at the time the requests were made for such, and that it take such action as necessary to restore the annuities then in force. The city of Chicago filed a motion to dismiss the complaint on the ground of want of equity. The board of education answered denying complainants' right to the relief sought. Many teachers and former teachers intervened.

As is stated by counsel for appellants in their reply brief, "appellants' case rests upon the proposition that they have vested property rights to the payment of future installments of the annuities on the basis fixed by the law in force at the time they retired, or being entitled to retire, made application for retirement." This question will be first considered. They cite *DeWolf* v. *Bowley,* 355 Ill. 530, *Porter* v. *Loehr,* 332 id. 353, *Beutel* v. *Foreman,* 288 id. 106, *People* v. *Abbott,* 274 id. 380, *Hughes* v. *Traeger,* 264 id. 612, and *Pennie* v. *Reis,* 132 U. S. 464, 33 L. Ed. 426, in support of this claim.

The case of *DeWolf* v. *Bowley, supra,* did not involve the question of vested property rights but announced the oft-repeated doctrine under which pensions to retired officers are sustained—i. e., that a public benefit accrued in two ways: by encouraging such officers or employees to remain in the service, and by retiring from public service those who have become incapacitated from performing the duties as well as they might be performed by younger or more vigorous persons. The opinion in that case reviews decisions of this and other courts.

Porter v. *Loehr, supra,* concerned an amendment to the Police Pension act which increased the pension of retired police officers and applied such increased pensions to those who had retired under the previous act. The act was held

unconstitutional for the reason that the increase of pensions to retired policemen did not contemplate the rendition of any additional service by the pensioners and the amount of their pensions was fixed by law when they retired and had their sole basis in services rendered prior to retirement. This was the ground upon which the invalidity of the act was held, and not, as counsel for appellants argue, because of retroactive application of such amendment.

Beutel v. *Foreman, supra,* was a mandamus proceeding to compel the board administering the Police Pension Fund act to grant a pension. Beutel retired after twenty years of service as a member of the police force and filed an application for pension. About three months after filing this application the act was amended, adding the requirement that the retired officer shall also have reached the age of fifty years. Beutel had not reached that age and the board denied his petition. The act prior to the amendment of July, 1917, had no fifty-year requirement. It was argued that Beutel had a vested right in a pension when on March 31, 1917, he retired and made application for such pension, and that the legislature could not take away that right by subsequent legislation imposing another requirement. It was argued that the amendment was unconstitutional as violating the property right vested in him. It was there held that Beutel enjoyed no right which could not be altered by the legislature.

A right, to be within the protection of the constitution, must be a vested right. It must be something more than a mere expectancy based upon an anticipated continuance of an existing law. If before rights become vested in particular individuals the convenience of the State induces amendment or repeal, such individuals have no cause to complain. (*People* v. *Clark*, 283 Ill. 221; 1 Lewis on Stat. Const. (2d ed.) sec. 284.) It was held in the *Beutel* case that municipalities may take away the right to pensions under circumstances shown in that record without affecting the contract right of pensioners or violating the constitution.

Counsel for appellants say that the doctrine of the *Beutel* case is to be applied only to facts on that record, which

showed that no right in the retiring officer had become vested, while here the rights of these retired teachers had become vested before the amendment of 1935. We are unable to see the lack of analogy on the facts. In that case Beutel had complied with the statute as it existed at the time he retired but it was changed before the board acted on his application for pension. The opinion in that case discusses the authorities fully and need not be re-examined here. We adhere to the holding there made. None of the cases cited by counsel for appellants have modified the principles laid down in the *Beutel* case. The decisions of this court have uniformly been that pensions are not based on contract but are mere expectancies based upon anticipated continuance of existing law, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal Constitution.

Counsel for appellants argue that if an amendment may not be made retroactive to include increased pensions to those who had retired before such increase was authorized, then by the same token the legislature should not be permitted to reduce pensions by the retroactive application of such amendatory statute, and they call attention to what they deem an analogy in logic between this case and *Porter* v. *Loehr, supra.* It will be observed, however, that the basis of the holding in the *Porter* case was not that the amendatory act could not be made retroactive, but the reason for the invalidity of that act as applied to Porter was that an increase of pension to those retiring before such increase was authorized was not in contemplation of services to be rendered nor an inducement to continued service but was a gratuity, and so came within constitutional inhibition.

Appellants' counsel also say that *Miner* v. *Stafford,* 326 Ill. 204, supports their contention that this act should not be construed to be retroactive in its application. In that case petitioner's husband was killed some six months before an amendment to the Pension act increasing pensions to widows of policemen who were killed in service was enacted. It was held that her right to a pension was one

given by the act as it existed at the time the right to receive a pension accrued and not by the amendment. While the opinion refers to the fact that nothing is said in the amendatory act showing an intention to give it retroactive application, yet the basis of the opinion was that her right to a pension arose before the amendment was enacted. As is pointed out in *Porter* v. *Loehr,* supra, to give a pension act of that character retroactive effect would be to violate the constitutional prohibition against donation of public funds for private interests. In this case the 1935 amendment of the Miller act by specific reference repealed section 3, which fixed the amount of the retirement annuities, leaving nothing in the act other than the provision for $500 per annum to authorize the payment of those annuities. It would be difficult to conceive of stronger evidence of legislative intent to make the amendment retroactive in its application.

In *Hughes* v. *Traeger, supra,* it was held that a change in the disposition of a fund, a portion of which was contributed from public taxation and a portion from the salaries of employees, does not violate any vested right of those interested therein, since such right, until it accrues, is only in the nature of an expectancy created by law and which the law may revoke or destroy. Counsel argue that this case is authority for their claims of vested right because of the language of the opinion, "until the happening of the event designated by the statute for its distribution he has no vested right in the fund but only an expectancy created by the law," and that in this case the happening of the event designated by the statute was the retirement of teachers under the provisions of the Miller act. The doctrine as we have seen, is thoroughly established in this State that the State may control the giving or taking away of pensions, and, in consideration of such expressions as "happening of contingency," this doctrine must be borne in mind. If there became due to any of these appellants any installment under the act prior to the amendment of 1935 which was not paid they would have a cause of action to recover it, for until a statute is amended the processes of the law are afforded those who are beneficiaries under it.

It is not intimated in this case that there are any such unpaid installments.

Pennie v. *Reis, supra,* relied upon by appellants, arose in California. In 1878 a statute was adopted in that State providing that upon death of a police officer after June 1, 1878, there should be paid to his legal representatives, out of a pension fund established by the act, the sum of $1000. The act required contributions to the fund, and provided that in case a policeman resigned he should be re-paid the amounts he had contributed. On March 4, 1889, a new pension law was enacted, providing for the merger of certain pension funds and repealing the statute under the terms of which $1000 was to be paid to a deceased policeman's estate. This amendment occurred just nine days before the death of the policeman whose representatives were seeking the award. It was contended there, as here, that the act of 1889 violated constitutional provisions against the impairment of the obligation of contract and destroyed vested rights. It was held that this was not so. The court there said, that "until the particular event should happen upon which the money or part of it was to be paid there was no vested right in the officer to such payment. His interest in the fund was until then a mere expectancy created by law and liable to be revoked or destroyed by the same authority."

The difference in nature between a lump sum pension or award and a continued pension is obvious and is sufficient to mark the difference in the rule with reference to interest therein as found in the decisions of the courts. Under a statute such as the one in *Pennie* v. *Reis, supra,* where, on the happening of a certain event, a certain sum of money became due, the interest of the beneficiary when such event takes place is analogous to the interest of a pensioner whose installment or pension has become due under the terms of a pension act. *Pennie* v. *Reis, supra,* does not in any way militate against the rule generally adopted, that pension acts do not create in their beneficiaries a vested interest in future installments of the pensions created thereby.

Counsel for appellants seeks to draw a distinction between the payment of a pension and the payment of an

annuity as affecting the question of a vested right therein. The Miller act uses the term "annuity." Counsel say that even though this court has held that pensioners have no vested rights in future installments of pensions, yet there is a sufficient difference between a pension and an annuity to justify their position that appellants have a vested right in such annuity. They say that annuities are in the nature of compensation for services theretofore rendered for which compensation has been withheld. We are unable to see the distinction. The plan of payment is the same, the purposes are evidently the same, and the use of the term "annuity" instead of "pension"—which is but an annuity—does not seem to us to result in the distinction for which counsel for appellants contend. Moreover, it may be observed that counsel's contention that these payments are annuities of compensation withheld for services rendered, if of force, would endanger the entire act, since section 19 of article 4 of the constitution prohibits the granting or authorizing of extra compensation, fee or allowance to any public officer or contractor after service has been rendered or contract made.

Counsel for appellants also argue that under section 4 of the statute on Statutes (Smith-Hurd Stat. 1935, chap. 131, par. 4, p. 3140), the amendment to the Miller act should be construed as retaining provisions for those teachers who retired before the amendment. Section 4 provides that "no new law shall be construed to repeal a former law, as to * * * any right accrued or claim arising under the former law * * * before the new law takes effect." This statute can be of no avail unless the right of appellants to this pension is a vested right. In addition, it may be observed that the Miller act of 1935 is a complete act within itself, revising the old Miller act. There is therefore no room for the application of section 4 of the statute on Statutes.

We are of the opinion that the superior court did not err in dismissing appellants' bill. The decree is therefore affirmed.

Decree affirmed.